

good faith, the borrower may still be in default for reasons, such as, but not limited to: no longer farming; prior lienholder foreclosure; bankruptcy or under court jurisdiction; not properly maintaining chattel and real estate security; not properly accounting for the sale of security; or not carrying out any other agreement made with the Agency.

(5) The borrower must be current or less than 90 days past due on all FLP loans at the time the application for DSA is complete. Borrowers paying under a debt settlement adjustment agreement in accordance with subpart B of part 1956 of this chapter are not eligible.

(6) The borrower must not be 165 or more days past due when Exhibit A of Agency Instruction 1951-T (available in any FSA office) is executed.

(7) As a direct result of the designated natural disaster, the borrower does not have sufficient income available to pay all family living and operating expenses, other creditors, and FSA. This determination will be based on the borrower's actual production, income and expense records for the disaster or affected year and any other records required by the servicing official. Compensation received for losses shall be considered as well as increased expenses incurred because of the disaster.

(8) For the next business accounting year, the borrower must develop a positive cash flow projection showing that the borrower will at least be able to pay all operating expenses and taxes due during the year, essential family living expenses and meet scheduled payments on all debts, including FLP debts. The cash flow projection must be prepared in accordance with 7 CFR 1924.56. The borrower will provide any documentation required to support the cash flow projection.

(9) After the amount for each loan is set-aside, all FLP and NP farm type loans of the borrower must be current.

(10) The borrower's FLP loans have not been accelerated.

(11) The borrower's FLP loans have not been restructured under subpart S of this part since the natural disaster occurred.

(b) *Loan limitation requirements.* (1) The loan must have been outstanding at the time of the natural disaster.

(2) The term remaining on the loan receiving DSA equals or exceeds 2 years from the due date of the installment being set-aside.

(3) The amount set-aside may not exceed the amount of the first or second scheduled annual installment due after the disaster occurred.

(4) The amount set-aside may not exceed the amount the borrower was unable to pay FSA due to the disaster. Borrowers are required to pay any portion of an installment that they are able to pay.

(5) The amount set-aside will equal the unpaid balance remaining on the installment at the time the borrower signs Exhibit A of Agency Instruction 1951-T (available in any FSA office.) This amount will include the unpaid interest and any principal that would be credited to the account as if the installment were paid on the due date taking into consideration any payments applied to principal and interest since the due date. Recoverable cost items may not be set aside and the account must be serviced in accordance with § 1951.907(d).

[68 FR 55303, Sept. 25, 2003; 68 FR 69955, Dec. 16, 2003]

§§ 1951.955–1951.956 [Reserved]

§ 1951.957 Eligibility determination and processing.

(a) *Eligibility determination.* (1) Within 30 days of a complete DSA application, the Agency official will determine if the borrower meets the requirements set forth in § 1951.954. Approval shall be contingent upon the borrower's continuing eligibility through the signing of Exhibit A of Agency Instruction 1951-T (available in any FSA office).

(2) The borrower has 45 days to sign Exhibit A of Agency Instruction 1951-T (available in any FSA office) for each loan installment set-aside approved. Subject to § 1951.954(a)(6), the Agency may provide for a longer period of time under extenuating circumstances, such as where the Agency's approval is contingent upon the borrower paying a

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portion of the FLP payments from proceeds that may not be immediately available.

(b) *Processing.*(1) [Reserved]

(2) Interest will accrue on any principal amount set-aside at the same rate charged the non-set-aside portion. Interest will not accrue on the interest portion set-aside. Limited resource interest rate changes will affect the principal set-aside.

(3) The amount set-aside, including interest accrual on any principal set-aside, will be due on or before the final due date of the loan.

(4) If the borrower is not current on all FLP loans when Exhibit A of Agency Instruction 1951-T (available in any FSA office) is executed, the borrower, and all obligors in the case of an entity, must execute and provide to the Agency a best lien obtainable on all of their assets except:

(i) When taking a lien on such property will prevent the borrower from obtaining credit from other sources;

(ii) When the property could have significant environmental problems or costs;

(iii) When the Agency cannot obtain a valid lien;

(iv) When the property is the borrower's personal residence and appurtenances; provided:

(A) They are located on a separate parcel; and

(B) The real estate that serves as collateral for the Agency loan plus crops and chattels are valued at greater than or equal to 150 percent of the unpaid balance due on the loan.; or

(v) When the property is subsistence livestock, cash, special collateral accounts the borrower uses for the farming operation or for necessary living expenses, retirement accounts, personal vehicles necessary for family living or farm operating purposes, household goods and small tools and small equipment such as hand tools and lawn mowers, and other similar items.

(5)-(6) [Reserved]

(7) Payments applied to the amount set-aside will be applied first to interest and then to principal. If more than one installment is set-aside on the loan, payments will be applied to the oldest installment set-aside until paid

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in full, before applying payments to the second installment set-aside.

(c) *Adverse determination.* If the borrower becomes more than one installment behind on any FLP loan while processing the DSA request, or while an appeal is being considered, and the second installment cannot be paid current prior to exhibit A of FmHA Instruction 1951-T (available in any FSA office) being signed, the DSA request will be denied.

[60 FR 46756, Sept.8, 1995, as amended at 62 FR 41253, Aug. 1, 1997; 65 FR 31250, May 17, 2000; 68 FR 55303, Sept. 25, 2003]

§ 1951.958 Cancellation and reversal of DSA.

(a) *Reasons for cancellation.* The set-aside may be reversed and exhibit A of FmHA Instruction 1951-T cancelled under the following described situations:

(1) The loan is later restructured with primary loan servicing, (the total unpaid balance must be restructured);

(2) If prior to the first scheduled installment due date after set-aside, the servicing official determines that the current borrower, if delinquent, would qualify for a writedown or buyout in accordance with subpart S of this part; or

(3) When it has been determined that the borrower was provided unauthorized DSA assistance. (The set-aside will be cancelled after all appeal rights are exhausted. The set-aside will be removed from the account and the payment terms of the original promissory note will be retained as if DSA was never granted. Borrowers financially distressed or delinquent after reversal of the set-aside will be serviced in accordance with subpart S of this part).

(b) [Reserved]

[60 FR 46756, Sept. 8, 1995, as amended at 62 FR 10157, Mar. 5, 1997]

§ 1951.959 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute or other applicable law if it is determined that application of the requirement or provision would adversely affect the Government's interest. The Administrator will exercise